

Why Marriage Equality May Not Be That Equal

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LGBT activists casting envious glances abroad are ignoring marginalised narratives at home

IF YOU have more than five gay friends on Facebook, you probably saw the YouTube video of the New Zealand MPs breaking into a Maori love song after they passed the [gay marriage act](#). Though I fit the criterion, given that I am what most people in the country would refer to as a *chhakka*, I'm yet to see it. A similar act passed in the French parliament in the same month resulted in a wave of status updates cheering these decisions. These I have read, and almost everyone expressed some combination of hope about India following suit and despair on how we would take so long to catch up with the 'progressive' West.

Now what exactly do we want to catch up with? Scholars like Ruth Vanita and Saleem Kidwai have made the claim, with enough evidence to support that same-sex marriages have happened in the subcontinent before colonisation and even after. A [hijra](#) friend had claimed way back in 2003 that in just six months, she had been invited to witness at least 15 weddings between hijras and their partners, or between male couples. Or consider Koovagam, where hundreds of hijras come every year to marry their lovers. So clearly, it's not that people here don't get married, but that we want to claim legal status now.

What will this legal status offer someone from the hijra community, who works on the street and has negligible private property or

savings? No alimony for sure, because more often than not it is her partner who is dependent on her earnings. Maybe we wish to protect the rights of her partner to her marginal savings post her death? But then again, a hijra's dharma stipulates that she give her wealth to her guru or *chelas*, and not leave it for some man, who is likely to desert her at some point to return to his 'true' family. Same-sex marriage for the hijra, then, allows the man she marries to make a legal claim for the wealth that he would otherwise have been considered not deserving of, much like how parents or kin of hijras have been known in recent years to come in and make legal claims for their property after their death, even as they possibly were ashamed of her existence till then. In effect, legalising same-sex marriages offers nothing for the hijra community at least.

So we seem to want same-sex marriages to protect the legal rights of urban middle-class gay or lesbian identified men and women who might want to contract a legal marriage to ensure that they are able to access corporate and state benefits that accrue to couples. This urban minority, and its desire for a global LGBT identity, is increasingly the focus of much of LGBT legal rights work, even as it claims to speak for all people expressing transgressive erotic desires. This subsuming of the hijra into the global language of LGBT rights is reflective of the many ways in which legal LGBT activism in the country directs itself.

In the past decade, the euphoric attention that was brought to the reading down of Section 377 of the Indian Penal Code has been questioned by many commentators as not reflecting the concerns of hijras and other marginalised communities. In 2003, a number of groups and individuals, who met in Pune at a meeting hosted by the lesbian-bisexual women's collective Olava, opposed the petition filed in the Delhi High Court, reasoning that by asking for the exclusion of all consensual private sexual activity, the petitioners were, in effect, not concerning themselves with the lives of hijras, whose transgressive erotic acts in public spaces were most violently regulated by the police. And given that barely any cases had been filed under Section 377 since Independence, and that hijras were constantly arrested on propped-up charges of offending public

morality, the group expressed the need for social action against such violent morality to be far more cogent and necessary in order to effect a change in social attitudes towards alternate erotic expressions.

The group saw the legal battle against Section 377, and the particular shape it had taken, as mostly driven from an upper-class male standpoint that was increasingly constructing it as the proverbial Damocles sword that threatened the legitimacy of their private sexual expressions. That this upper class gay-identified male vision was being directed through the language of human rights and was offering the hijra community as one which would be saved by these particular legal reforms was seen as problematic, given that repealing Section 377 was not a primary demand of the community.

This particular problem is also reflected in the way that a section of LGBT rights activists have been demanding that rape laws be made gender neutral, again under the pretext of giving hijras recourse to justice against rape and sexual assault. Given the new law's recommendation to widen the existing definition of rape through the idea of sexual assault that included within its ambit acts such as sexual propositioning through touch and exposure of private parts, there is a high possibility that gender- neutral laws could more easily be used against hijras by the police, with help from male complainants, on two accounts. First, that the hijra's mode of navigating public places includes acts of shaming men who ridicule her through a display of the castrated sexual organ. Second, that their livelihoods were also dependent on an overt sexual flirting with male bodies in the public space. Here, too, LGBT activism has ignored various other possibilities, such as demanding a Prevention of Atrocities Against Hijras Act, akin to the SC/ST Prevention of Atrocities Act, to offer real justice against violence.

Just as the singing of a Maori song in the New Zealand parliament hides the violent history of colonialism and the continuing racial discrimination by appropriating a marginal native voice, we might similarly be responsible for appropriating hijras to further a minority elite group's global interests; at the cost of a violent erasure of a way of living through transgressive erotic desire that the hijras have built over many decades. The hijra is getting married as and when she

wants; she's not the coy bride looking state-ward for approval, just as repealing Section 377 or gender neutral rape laws are not her demands. In order to avoid appropriating her, we might have to start any political activism, legal or otherwise, on marriage or rape, from the standpoint of a system of living that has perhaps been the most visible — if not the only — recourse for any kind of alternate sexual expression, apart from sex workers, for at least 4,000 years and built on a wealth of practical knowledge. Particularly when one considers the imminent threat to this system, not just from market forces selling individuated lifestyle, but also from similar strategies of translating the hijra as an individual [transgender](#) person effected by globally-oriented LGBT rights work and NGO speak. Such a beginning is surely not only obligatory, but also vital and just.

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